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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,535	08/07/2000	KRZYSZTOF D. MALOWANIEC		1566

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EXAMINER	
NORDMEYER, PATRICIA L	
ART UNIT	**PAPER NUMBER**
1772	17

DATE MAILED: 12/03/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TE15

Supplementary Office Action Summary	Application No.	Applicant(s)	
	09/509,535	MALOWANIEC ET AL.	
	Examiner	Art Unit	
	Patricia L. Nordmeyer	1772	

-- The MAILING DATE of this communication app ars on the cover she t with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 November 2002* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *22-47* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *22-47* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

New Rejections

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 38 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claim38, the phrase "likewise" renders the claim indefinite because the claim includes elements not actually disclosed (those encompassed by "likewise"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

Clarification/correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 22, 26 – 37, 40 – 41, 44 and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by Tapp (USPN 5, 169,712).

Tapp discloses a composite material formed with microporous film and at least one layer of a non-woven web of stable fibers (Column 2, lines 46 – 55), wherein layer comprised of fibers have diameters not greater than 10 microns (Column 18, lines 6 – 9). The film layer is placed on one side of the fiber layers to form a disposable hygiene article such as a diaper (Column 29, lines 1 – 9). The layers are thermobonded together, forming the three layer composite (Column 26, lines 64 – 68), which inherently causes the third layer to penetrate the surface structure of the first layer and reducing the mean spacing between the third layer and the film layer. An overall weight per unit surface area of the composite is 30 to 200 g/m^2 (Column 27, lines 11 – 14), wherein the weight of the third layer is 5 to 70 g/m^2 (Column 17, lines 66 – 68) and the weight of the first layer is 10 to 30 g/m^2 (Column 17, lines 41 – 44). The film layer contains micropores with diameters of 0.2 to 20 μm in a film layer (Column 11, lines 35 – 40) with a thickness of between 5 and 1000 μm (Column 16, lines 38 – 42) that allows the transfer of water vapor while being impermeable to liquid (Column 27, lines 43 – 47). Since Tapp discloses the composite material with the diameters of the individual fibers, the weight per surface area of the fibers and the film layer with micropores of a certain diameter, it would be inherent that the composite would have a tear strength of at least 15 N/25 mm.

Regarding the limitation of providing the second layer be a melt-blown process in claim 22, the determination of patentability for a product-by-process claim is based on the product

itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation of the film formed by a melt-blown process is a method of production and therefore does not determine the patentability of the product itself. Process limitations are given little or no patentable weight. The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claims 23 – 25, 38, 39, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tapp in view of Braun et al. (USPN 4,828,556).

Tapp discloses the claimed composite material above except for the second film layer

being breathable but liquid proof and the second film layer being permeable to water vapor through the process of chemisorption.

Braun et al. discloses a nonporous poly(vinyl alcohol) film that transports water molecules through the film layer by means of solubility (Column 10, lines 36 – 51) in a breathable, multi-layered barrier (Column 7, lines 20 – 21) with a fiber layer that is used for an outer cover in absorbent articles (Column 1, lines 37 – 45) for the purpose of removing moisture away from the surface of the skin of the user to avoid diaper rash and giving the article aesthetic qualities (Column 1, line 59 to Column 2, line 2).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the nonporous film of poly(vinyl alcohol) in Tapp in order to remove moisture away from the surface of the skin of the user to avoid diaper rash and giving the article aesthetic qualities as taught by Braun et al.

Regarding claims 23 - 25, Tapp discloses the microfiber layer, the third or outside layer, to be made of fibers with diameters less than 10 μm. Therefore, one of ordinary skill in the art through routine experimentation could determine the diameter of the fiber which gives the retention or adhesion force of the hook material. The diameter of the microfibers is deemed to be a cause effective variable with regard to the retention or adhesion force of the hook material to the outside of the composite material. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as diameter of

the microfibers through routine experimentation in the absence of a showing of criticality in the claimed microfiber diameter. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

Tapp, as modified with Braun et al., discloses the claimed invention except for the microfiber being disposed on the outside of the backing sheet. It would have been obvious to one having ordinary skill in the art at the time the invention was made to place the microfiber on the outside of the backing sheet to give the outside of the article a soft feel, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse,* 86 USPQ 70.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 6,277,104 to Lasko et al., U.S. Patent No. 5,843,068 to Allen et al., U.S. Patent No. 6,420,625 to Jones et al., U.S. Patent No. 5,789,065 to Haffner et al. and U.S. Patent No. 5,804,286 to Quantrille et al. are cited to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia L. Nordmeyer whose telephone number is (703) 306-

5480. The examiner can normally be reached on Mon.-Thurs. from 7:00-4:30 & alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on (703) 308-4251. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Patricia L. Nordmeyer
Examiner
Art Unit 1772

pln
November 21, 2002

HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

11/25/02